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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ROBERT JOSEPH MARSHALL,

14 Defendant.

Case No. 2:01-cr-00130-LDG

ORDER

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16 The defendant, Robert Joseph Marshall, filed a motion pursuant to 28 U.S.C. §2255
17 to vacate, set aside, or correct his sentence (#229). The United States moved to dismiss
18 (#232), asserting that Marshall's §2255 petition is untimely. Marshall has not filed an
19 opposition.

20 Pursuant to 28 U.S.C. §2255(f), this court may consider Marshall's motion only if he
21 filed his motion within one year of the latest of (1) the date the judgment of conviction
22 became final, (2) the date on which an impediment to filing the motion is removed, (3) the
23 date on which the right asserted was first recognized by the United States Supreme Court,
24 or (4) the date on which the facts supporting the claim could have been discovered through
25 the exercise of due diligence.

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1 As Marshall filed his motion on July 20, 2009, his motion is timely only if one of the
2 above dates is after July 20, 2008. Marshall's judgment of conviction became final on April
3 14, 2008, when the Supreme Court denied his certiorari petition, and thus occurred more
4 than a year prior to the date Marshall filed his motion. Marshall has neither alleged nor
5 argued that government action impeded the filing of his motion. His motion does not seek
6 relief pursuant to a right first recognized by the Supreme Court after July 20, 2008. Finally,
7 Marshall has neither alleged nor argued that his claims rest upon facts that could not have
8 been discovered, with the exercise of due diligence, prior to July 20, 2008. Accordingly, as
9 Marshall did not timely file his motion,

10 THE COURT ORDERS that the United States' Motion to Dismiss (#232) is
11 GRANTED.

12 THE COURT FURTHER ORDERS that Robert Joseph Marshall's Motion to Vacate,
13 Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255 (#229) is DISMISSED.

15 DATED this 14 day of October, 2010.

Lloyd D. George
United States District Judge